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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE BANK OF NEW YORK MELLON,
as Trustee, etc. et al.,

Plaintiffs and Respondents,

v.

NANCY M. HORNER,

Defendant and Appellant.

G055500

(Super. Ct. No. 30-2017-00911630)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Robert James Moss, Judge. Affirmed.

Law Offices of Stephen F. Lopez and Stephen F. Lopez for Defendant and Appellant.

Hall Griffin, Howard D. Hall, Jered T. Ede and Crystal R. Davieau for Plaintiffs and Respondents.

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Plaintiffs The Bank of New York Mellon, as trustee for Structured Asset Securities Corporation Mortgage Pass-Through Certificates, Series 2005-16 (BONY) and Nationstar Mortgage LLC (Nationstar) filed a post-foreclosure unlawful detainer action seeking possession of defendant Nancy M. Horner’s Huntington Beach home (the Property). The court granted plaintiffs’ motion for summary judgment and awarded possession of the Property to plaintiffs. Defendant appeals from the judgment, contending the court erred because the foreclosure sale was void. According to defendant, plaintiffs failed to show the foreclosure sale complied with Civil Code section 2924 or that BONY duly perfected title to the Property.¹ For the reasons stated below, we disagree and affirm the judgment.

FACTS

In July 2005, defendant received an \$825,000 loan through Lehman Brothers Bank, FSB (Lehman). The loan was secured by a deed of trust recorded against the Property. Mortgage Electronic Registration Systems, Inc. (MERS), acting as a nominee for Lehman, was the beneficiary under the deed of trust. In June 2011, MERS assigned all beneficial interest under the deed of trust to Aurora Loan Services, LLC (Aurora). In June 2012, Aurora assigned all beneficial interest under the deed of trust to Nationstar.

After defendant failed to make her loan payments for several years, an authorized trustee recorded a notice of default and election to sell in November 2013 and a notice of trustee’s sale in June 2015. On December 11, 2015, “Aurora . . . by Nationstar . . . , its attorney-in-fact” assigned all beneficial interest under the deed of trust to BONY. Because Aurora had already assigned its interest to Nationstar, this

¹ All statutory references are to the Civil Code unless otherwise stated.

assignment became the focus of the present lawsuit. The assignment was recorded on December 28, 2015. On December 30, 2015, the foreclosing trustee initiated a foreclosure sale and sold the Property to BONY.

On February 4, 2016, Nationstar assigned all beneficial interest under the deed of trust to BONY. This was an attempt to correct the irregularity mentioned above. The corrective assignment was recorded on February 17, 2016. On the same day, a trustee's deed upon sale was recorded and indicated the foreclosing trustee had sold the Property to BONY. In March 2017, BONY served on defendant a notice to quit the premises. After defendant failed to vacate the Property, plaintiffs filed the underlying complaint for unlawful detainer and sought possession of the Property, damages, and costs.

In August 2017, plaintiffs filed a motion for summary judgment, which defendant opposed. Plaintiffs' separate statement of material facts included the following fact: "As the substituted trustee with the power of sale, Wolf Firm, initiated the non-judicial foreclosure proceedings . . . and sold the Property to [BONY] at the non-judicial foreclosure sale held in compliance with . . . section 2924. Thereafter, on February 17, 2016, [BONY] perfected title to the Property by recording the Trustee's Deed Upon sale" In response, defendant stated this fact was undisputed.

In support of their motion, plaintiffs also submitted the declaration of Nationstar's assistant secretary. Among other things, the declarant stated: "BONY and Nationstar authorized The Wolf Law Firm ('Foreclosing Trustee') to commence, conduct, and conclude a trustee's sale . . . and ultimately the sale of the . . . Property to BONY" With respect to the assignment, the declarant stated: "Nationstar had full intent to transfer to BONY all rights and interest under the Deed of Trust held by it and/or Aurora" through the December 2015 assignment. The declarant also stated: "Because the [December 2015 assignment] said 'Aurora . . . by Nationstar . . . , it's Attorney-In-Fact', out of an abundance of caution and to abate any risk of confusion,

Nationstar subsequently recorded a corrected assignment to BONY [in February 2016], which identified Nationstar solely as the grantor.”

In September 2017, the court granted plaintiffs’ motion for summary judgment. The court found plaintiffs were “entitled to judgment for possession [of the Property] as a matter of law” because: “[¶] 1) [p]laintiffs . . . established that . . . BONY is the record owner of the . . . [P]roperty . . . through a Trustee’s Deed Upon Sale . . . ; [¶] 2) [p]laintiffs . . . established that, upon obtaining ownership of the subject property, . . . BONY caused [d]efendant to be served . . . with a lawful Three/Ninety Day Notice to All Occupants to Quit Premises . . . ; and [¶] 3) [p]laintiffs . . . established that [d]efendant remains in possession of the Property without . . . BONY’s permission, consent or approval.” The court also noted “[d]efendant did not provide the [c]ourt with admissible evidence that would generate any triable issue as to the material facts established by the [p]laintiffs, or otherwise establish an affirmative defense to th[e] action.”

DISCUSSION

Defendant contends the court erred by granting summary judgment in plaintiffs’ favor because BONY “was not the beneficiary of the deed of trust on the date of the sale,” which rendered the foreclosure sale void. Defendant claims the December 2015 “assignment from Aurora to BONY before the sale was void” because Aurora “had already assigned its interest in the deed of trust to Nationstar” so it “had nothing to assign to BONY.” Defendant accordingly argues the foreclosure sale did not comply with section 2924 and BONY did not duly perfect title. Among other things, plaintiffs contend the foreclosure sale complied with section 2924 and defendant’s arguments regarding the assignment are “claims of wrongful foreclosure [that are] not properly

brought . . . in [an] unlawful detainer action” We agree with plaintiffs and affirm the judgment.²

Standard of Review

A party is entitled to summary judgment “if all the papers submitted show that there is no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” (Code Civ. Proc., § 437c, subd. (c).) A triable issue of material fact exists only if “the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with the applicable standard of proof.” (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 845.) A plaintiff moving for summary judgment must produce admissible evidence on each element of a cause of action entitling it to judgment. (Code Civ. Proc., § 437c, subd. (p)(1).) Once the plaintiff has met its burden, “the burden shifts to the defendant . . . to show that a triable issue of one or more material facts exists as to the cause of action or a defense thereto.” (*Ibid.*)

We review de novo the court’s grant of summary judgment. (*ABCO, LLC v. Eversley* (2013) 213 Cal.App.4th 1092, 1098.) Although we conduct a de novo review, we “must presume the judgment is correct, and the appellant bears the burden of demonstrating error.” (*Jones v. Department of Corrections & Rehabilitation* (2007) 152 Cal.App.4th 1367, 1376.)

² Plaintiffs also claim defendant cannot dispute “*the foreclosing trustee held the sale in compliance with [s]ection 2924 and that BONY perfected its interest in the Property*” because defendant admitted this fact in the trial court proceedings. While defendant did not dispute this fact in her response to plaintiffs’ separate statement of material facts, it appears this was an inadvertent error because defendant argued the foreclosure sale did not comply with section 2924 in her opposition to the motion for summary judgment. We therefore decline to hold that defendant forfeited the right to appeal this issue, and will decide the matter on the merits.

The Court Did Not Err by Granting Plaintiffs' Summary Judgment Motion

An unlawful detainer action is a summary proceeding limited to resolution of the right to possession of the property and incidental damages resulting from the unlawful detention. (*Vella v. Hudgins* (1977) 20 Cal.3d 251, 255 (*Vella*); *Martin–Bragg v. Moore* (2013) 219 Cal.App.4th 367, 385.) “Ordinarily, issues respecting the title to the property cannot be adjudicated in an unlawful detainer action.” (*Martin–Bragg*, at p. 385.) However, under Code of Civil Procedure section 1161a, subdivision (b)(3), title may be adjudicated to determine if a purchaser of property at a trustee’s sale properly obtained and duly perfected title. (*Cheney v. Trauzettel* (1937) 9 Cal.2d 158, 159.) “[Code of Civil Procedure] section 1161a provides for a narrow and sharply focused examination of title. To establish that he is a proper plaintiff, one who has purchased property at a trustee’s sale and seeks to evict the occupant in possession must show that he acquired the property at a regularly conducted sale [in compliance with section 2924] and thereafter ‘duly perfected’ his title.” (*Vella*, at p. 255.) Only “‘to this limited extent, as provided by the statute, . . . title may be litigated in such a proceeding.’” (*Ibid.*) “Matters affecting the validity of the trust deed or primary obligation itself, or other basic defects in the plaintiff’s title, are neither properly raised in this summary proceeding for possession, nor are they concluded by the judgment.” (*Cheney*, at p. 160.)

Pursuant to section 2924, the trustee under a deed of trust containing a power of sale can proceed with a nonjudicial foreclosure sale upon default by the trustor. (*Id.*, subd. (a)(1).) The trustee first must record a notice of default and election to sell. (*Ibid.*) The trustee must then wait three months before issuing a notice of sale, which must be published, posted, and mailed 20 days before the sale and recorded 14 days before the sale. (§ 2924, subd. (a)(2); 2924f, subds. (b)(1)-(4).) “[A] nonjudicial foreclosure sale is presumed to have been conducted regularly [in compliance with section 2924], and the burden of proof rests with the party attempting to rebut this presumption.” (*Fontenot v. Wells Fargo Bank, N.A.* (2011) 198 Cal.App.4th 256, 270.)

Here, the undisputed material facts establish the foreclosure sale complied with section 2924. The trustee recorded a notice of default and election to sell at least three months before issuing a notice of sale. Defendant does not dispute the notices satisfied the requirements of section 2924. Defendant also cites no authority, nor has our research uncovered any, which suggests section 2924 requires BONY to prove the validity of its assignment.

In any event, the validity of the assignment to BONY is not dispositive because there is evidence Nationstar authorized the foreclosure sale. Relying on section 2924, subdivision (6), defendant argues BONY could not have initiated the foreclosure sale because “[o]nly the holder of the power of sale has the right to foreclose.” Section 2924, subdivision (6) provides: “No entity shall record or cause a notice of default to be recorded or otherwise initiate the foreclosure process unless it is the holder of the beneficial interest under the . . . deed of trust, *the original trustee or the substituted trustee under the deed of trust*, or the designated agent of the holder of the beneficial interest.” (Italics added.) Here, a substituted trustee initiated the foreclosure process, and Nationstar’s declaration stated *both* Nationstar and BONY authorized the trustee to “commence, conduct, and conclude” the foreclosure sale. Defendant did not present any contrary evidence. Thus, if the December 2015 assignment was void and BONY was not the beneficiary of the deed of trust before the foreclosure sale, Nationstar was the beneficiary and authorized the sale. If the December 2015 assignment was valid, BONY was the beneficiary and authorized the sale. In either scenario, the foreclosure sale was initiated by a trustee authorized by the beneficiary of the deed of trust.

Sciarratta v. U.S. Bank National Assn. (2016) 247 Cal.App.4th 552 (*Sciarrata*), which defendant extensively cites, is distinguishable. In *Sciarratta*, the court found a borrower adequately alleged a claim for wrongful foreclosure where the bank foreclosed on a deed of trust that had never been assigned to it. (*Id.* at pp. 563-565.) The complaint alleged JPMorgan Chase Bank, N.A. (Chase) assigned its interest under a deed

of trust to Deutsche Bank. (*Id.* at p. 557.) Chase then assigned its interest to Bank of America. (*Ibid.*) After Bank of America foreclosed on the property, Chase recorded a corrective assignment indicating Bank of America was the assignee in the original assignment to Deutsche Bank. (*Id.* at p. 558.) There were no allegations that Deutsche Bank intended to assign its interest to Bank of America. Here, on the other hand, there was evidence Nationstar was involved in the assignment to BONY. As stated in the declaration of Nationstar’s assistant secretary, Nationstar intended to assign its interest to BONY through the December 2015 assignment. This is supported by the following language in the assignment: “Aurora . . . by *Nationstar* . . . , it’s attorney-in-fact” (Italics added.) Out of an abundance of caution, Nationstar (not Aurora) also recorded a corrective assignment identifying Nationstar as the grantor. Thus, the instant case bears little resemblance to *Sciaratta*.

While the validity of BONY’s assignment is not dispositive, we also note we disagree with defendant’s attempt to challenge the assignment within the context of section 2924. We do not read any additional requirements into section 2924 for two reasons. First, as explained above, the issue of title is narrow and sharply focused in unlawful detainer actions. Second, if borrowers could challenge title in the way defendant seeks to do, they could delay unlawful detainer actions in the same way courts have held improper in pre-foreclosure cases. In those cases, courts have held a borrower cannot preempt a nonjudicial foreclosure through an action challenging the defendant’s ability to foreclose because allowing such a lawsuit ““would fundamentally undermine the nonjudicial nature of the process and introduce the possibility of lawsuits filed solely for the purpose of delaying valid foreclosures.”” (*Jenkins v. JPMorgan Chase Bank, N.A.* (2013) 216 Cal.App.4th 497, 513, overruled in part on other grounds in *Yvanova v. New Century Mortgage Corp.* (2016) 62 Cal.4th 919, 939.) As those cases have explained, “[n]owhere does the statute provide for a judicial action to determine whether the person initiating the foreclosure process is indeed authorized” (*Gomes v.*

Countrywide Home Loans, Inc. (2011) 192 Cal.App.4th 1149, 1155.) Because sections 2924 to 2924k establish a comprehensive and exhaustive statutory framework governing nonjudicial foreclosure sales, courts “‘have refused to read any additional requirements into the non-judicial foreclosure statute.’” (*Debrunner v. Deutsche Bank National Trust Co.* (2012) 204 Cal.App.4th 441.)

In arguing the validity of BONY’s assignment can be considered within the context of section 2924, defendant relies on post-foreclosure cases where a borrower sues for wrongful foreclosure after the bank acquired possession of the property. In those cases, courts considered whether “a borrower[has] standing to challenge an assignment [to the foreclosing entity] in an action seeking remedies for *wrongful foreclosure*.” (*Yvanova v. New Century Mortgage Corp.*, *supra*, 62 Cal.4th at p. 934 [holding a borrower has standing to sue post-foreclosure for wrongful foreclosure where an alleged defect in the assignment renders the assignment void]; see also *Sciarratta*, *supra*, 247 Cal.App.4th 552.) The cases do not address the precise issue before us—whether a plaintiff in an unlawful detainer action has shown the property was sold at a foreclosure sale in compliance with section 2924.

Unlike a wrongful foreclosure action, an unlawful detainer action is summary in character, and “ordinarily, only claims bearing directly upon the right of immediate possession are cognizable.” (*Vella*, *supra*, 20 Cal.3d at p. 255.) Given the summary nature of these cases, “[i]t has long been recognized that unlawful detainer statutes are to be strictly construed and that relief not statutorily authorized may not be given” (*Underwood v. Corsino* (2005) 133 Cal.App.4th 132, 136-137.) We accordingly find defendant’s challenge regarding BONY’s assignment falls outside the scope of section 2924 and do not reach the parties’ arguments about whether the assignment to BONY was void or ratified by the subsequent corrective assignment. And, as explained above, the validity of the assignment is not dispositive given evidence that Nationstar authorized the foreclosure sale.

DISPOSITION

The judgment is affirmed. Plaintiffs shall recover their costs on appeal.

IKOLA, J.

WE CONCUR:

MOORE, ACTING P. J.

GOETHALS, J.